

STATE OF CALIFORNIA

BEFORE THE COMMISSION ON JUDICIAL PERFORMANCE

FILED
MAR 05 2015
COMMISSION ON
JUDICIAL PERFORMANCE

INQUIRY CONCERNING
JUDGE MARC A. GARCIA

NOTICE OF FORMAL
PROCEEDINGS

No. 195

To Marc A. Garcia, a judge of the Merced County Superior Court from November 30, 2007 to the present:

Preliminary investigation pursuant to Rules of the Commission on Judicial Performance, rules 109 and 111, having been made, the Commission on Judicial Performance has concluded that formal proceedings should be instituted to inquire into the charges specified against you herein.

By the following allegations, you are charged with willful misconduct in office, conduct prejudicial to the administration of justice that brings the judicial office into disrepute, and improper action within the meaning of article VI, section 18 of the California Constitution providing for removal, censure, or public or private admonishment of a judge or former judge, to wit:

COUNT ONE

In 1999, you were hired as an associate by the Merced law firm of Cindy Morse and Thomas Pfeiff, known as Morse & Pfeiff. In 2001, you were made a partner and the firm name was changed to Morse, Pfeiff & Garcia. At the time, Merced County had separate contracts with about a dozen attorneys to provide indigent defense services when the Public Defender declared a conflict. (That group of attorneys included you and Pfeiff, who was one of several attorneys with contracts for juvenile representation. Attorney Morse primarily handled family law matters.)

In January 2003, a request for proposal was issued by Merced County for a contract to provide alternate indigent defense services, for a flat fee. The law firm of Morse, Pfeiff & Garcia submitted a proposal, and was awarded the indigent defense services contract for a five-year term starting in fiscal year 2003/2004 and ending with fiscal year 2007/2008 (contract number 2003093). The contract specified a fixed amount per year, increasing from \$1 million to \$1.15 million, for a total contract price of approximately \$5.6 million. Payments were made by the county monthly.

The Morse, Pfeiff & Garcia firm acted as both administrator of the contract and a provider of legal services. The contract provided for subcontracts with 8 to 10 attorneys, and you and Pfeiff also handled cases under the contract.

The party contracting with the county, referred to as "Attorney," was identified as the firm Morse, Pfeiff & Garcia. Pfeiff signed the contract and all later amendments. The contract and amendments were signed on behalf of the county by the chair of the county board of supervisors, and approved as to form by county counsel.

Shortly before January 2004, the firm of Morse, Pfeiff & Garcia was terminated and you opened your own law office in Merced, known as The Garcia Law Firm. On January 1, 2004, concurrent with the dissolution of the Morse, Pfeiff & Garcia general partnership, The Garcia Law Firm and the Law Offices of Morse & Pfeiff entered into a Joint Venture Agreement, which was signed by you, Pfeiff and Morse.

The Joint Venture Agreement formed a "new general partnership" between the two firms. The joint venture was limited to the indigent defense contract: "This agreement forms a Joint Venture between the general partnership of Morse & Pfeiff and Garcia Law Firm to administer Merced County Contract 2003[0]93." The name of the joint venture was "Morse, Pfeiff & Garcia." Its location was the office address of Morse & Pfeiff. (The Joint Venture Agreement provided that you were to receive 45.662 % of the net profits annually under the indigent defense contract, payable monthly, and Morse & Pfeiff was to receive 54.338%.)

In April 2004, an "Assignment of Merced County Contract No. 2003093 and Consent of County of Merced" was executed to reflect the change in structure of the

contracting "Attorney." Amendment No. 1 to the contract also was executed, to change the name of the contracting Attorney to the "Morse and Pfeiff and Garcia Joint Venture."

In May 2006, an amendment to the Joint Venture Agreement was executed by you, Pfeiff and Morse, renaming the joint venture "Merced Defense Associates (M.D.A.)," which became known as MDA.

In July 2007, a two-year extension to the indigent defense contract was approved, for fiscal year 2008/2009 through fiscal year 2009/2010 (Amendment No. 2; number of subcontracting attorneys was increased, fixed amount for fiscal year 2007/2008 was increased to \$1.5 million, fixed amount was set at approximately \$1.6 million for 2008/2009, and \$1.7 million for 2009/2010).

In early October 2007, your judicial appointment was announced. On November 29, 2007, an agreement dissolving the joint venture was signed by you on behalf of the Garcia Law Firm and by Pfeiff on behalf of Morse and Pfeiff, as follows:

DISSOLUTION OF JOINT VENTURE
(Merced Defense Associates)

The Law Offices of Morse and Pfeiff (hereafter Morse and Pfeiff) and the Garcia Law Firm (hereafter Garcia), for due consideration, hereby dissolve the joint venture known as Merced Defense Associates. The entity known as Merced Defense Associates shall be the sole property of Morse and Pfeiff as of November 29, 2007.

A separate one-page agreement specifying the financial terms was also executed by you and Pfeiff on November 29, 2007, as set forth below. It provided that MDA would pay you \$250,000, in monthly payments of \$4,518 starting in January 2008, and that the payments would cease if the county terminated or did not renew the indigent services contract:

TERMS OF DISSOLUTION OF JOINT VENTURE
(Merced Defense Associates)

The parties to this agreement, the Law Offices of Morse and Pfeiff (hereinafter Morse and Pfeiff) and the Garcia Law Firm (hereinafter Garcia), agree to dissolve the joint venture known as Merced Defense Associates under the terms expressed in this agreement. Upon execution of this agreement the joint venture shall terminate on November 29, 2007 and the entity known as Merced Defense Associates shall become the sole property of Morse and Pfeiff. The Dissolution of Joint Venture executed by the parties is herein incorporated by this reference.

The parties agree to the following terms:

1. Merced Defense Associates shall pay to Garcia the sum of four thousand five hundred sixteen dollars (\$4,516.00) on or about the first of each month commencing January 1, 2008. The funds shall be deposited into a blind trust account established by Garcia;
2. Said payments shall continue until any one of the following:
 - A. Merced Defense Associates has paid a total of two hundred fifty thousand dollars (\$250,000.00) into the account, or;
 - B. The contract between the County of Merced and Merced Defense Associates to provide indigent defense services is terminated by Merced County, or;
 - C. The contract between the County of Merced and Merced Defense Associates expires and is not renewed, or;
 - D. The compensation currently provided for in the contract between the County of Merced and Merced Defense Associates is materially reduced.

If at any time ownership of the entity known as Merced Defense Associates is transferred, for consideration, from Morse and Pfeiff to a buyer prior to payment of the entire amount

mentioned in 2A above payments from Morse and Pfeiff shall continue until the entire amount is paid.

(Pfeiff had emailed you on November 28, attaching what he described as the two documents needed to dissolve the joint venture. He stated in the email that the "Dissolution to Dissolve the Joint Venture is the one we provide to the county," and that the "other one has the terms and incorporates the Dissolution" and "is for our business purposes only." Pfeiff's email stated that he did not plan to voluntarily relinquish the indigent defense contract at renewal time, but could not predict his intentions that far in advance, and had included a provision that the payments to you would terminate if the contract was not renewed for any reason.)

In January 2008, you began receiving monthly payments of \$4,516 pursuant to the Terms of Dissolution agreement. The payments were made by check. The checks were payable to Marc Garcia, and were drawn on the account of "Law Offices of Morse & Pfeiff." The checks were signed by the Morse & Pfeiff office manager. The monthly payments continued through August 2012, until you had been paid \$250,000. All but two of the 56 monthly payments to you were for \$4,516. The February 2008 check, from which some expenses had been deducted, was for \$1,633.88. The final check, in August 2012, was for \$1,620. (In early 2012, during the normal course of processing all judicial mail, a judicial secretary opened an envelope addressed to you that contained a \$4,516 check to you from Morse & Pfeiff. You instructed the secretary not to open any of your judicial mail in the future.)

In a June 2008 letter from Pfeiff to the county analyst who was the primary county contact for the indigent services contract from 2003 through 2012, Pfeiff stated, "You recently requested confirmation that Marc Garcia no longer has an interest in MDA. I have enclosed herewith a copy of our agreement terminating his interest." The one-page Dissolution of Joint Venture was attached. The Terms of Dissolution agreement was not attached.

When you took the bench in 2007, you were initially assigned to a civil department. In 2009, you were reassigned from a civil department to a criminal department. (You heard

preliminary hearings and felony trials in 2009, and misdemeanors in 2010. Since 2011 you have been assigned to a felony trial department.) Pfeiff and other MDA attorneys regularly appeared before you. You did not disclose the ongoing payments to your presiding judges.

In mid-2009, Pfeiff presented the county with a request for approval of a contract extension. In October 2009, a three-year extension to the contract was approved, from fiscal year 2010/2011 through fiscal year 2012/2013 (Amendment No. 3; fixed amount was set at approximately \$1.7 million for 2011/2012, and \$1.8 million for 2012/2013). In July 2011, a two-year extension was approved, for fiscal years 2013/2014 and 2014/2015 (Amendment No. 4).

The county was not at any point made aware, by you or otherwise, of the Terms of Dissolution agreement, the fact that you had an interest in future payments under the MDA contract, or the fact that funds being paid to MDA by the county were being paid to you by Morse & Pfeiff after you took the bench. When the county agreed to renew the indigent defense contract in 2009, it was not aware that public funds that would be paid to MDA under the contract extension would be paid to you.

A. On your Statements of Economic Interests for the years 2008 through 2012, executed under penalty of perjury, you failed to disclose the \$250,000 in income you received pursuant to the Terms of Dissolution agreement. (In March 2014, you filed amended Statements of Economic Interests for the years 2008-2012. You reported the income on Schedule C as "Sale of Interest in joint venture agreement in MDA." The source of income is identified as "Merced Defense Associates/Morse & Pfeiff.").

Your conduct violated the Code of Judicial Ethics, canons 1, 2 and 2A.

B. From 2009 through August 2012, while you were assigned to a criminal department and payments to you under the Terms of Dissolution agreement were ongoing, you failed to disqualify yourself in matters in which attorney Pfeiff appeared before you, including numerous MDA cases. You failed to disclose your ongoing financial relationship with Pfeiff and MDA. You also failed to disclose the ongoing financial relationship with Pfeiff and MDA in matters in which other MDA attorneys appeared before you.

Your conduct violated the Code of Judicial Ethics, canons 1, 2, 2A, 3E(1), 3E(2)(a), and former canon 3E(2).

C. The Terms of Dissolution agreement provided that you had an interest in future payments to be made under a government contract for which you would not be providing services, after you took the bench. By entering into that agreement and accepting payments pursuant to it, you violated the Code of Judicial Ethics, canons 1, 2, 2A, 4A(1), 4D(1)(b), and 4D(4).

In furtherance of your interest in continuing to receive payments under the Terms of Dissolution agreement, you concealed the fact that you had entered into an agreement in which you had an interest in future payments under the MDA contract, and concealed the fact that you were receiving payments from funds paid by the county to MDA after you took the bench and were no longer performing services under the MDA contract. Your conduct violated the Code of Judicial Ethics, canons 1, 2, and 2A.

YOU ARE HEREBY GIVEN NOTICE, pursuant to Rules of the Commission on Judicial Performance, rule 118, that formal proceedings have been instituted and shall proceed in accordance with Rules of the Commission on Judicial Performance, rules 101-138.

Pursuant to Rules of the Commission on Judicial Performance, rules 104(c) and 119, you must file a written answer to the charges against you within twenty (20) days after service of this notice upon you. The answer shall be filed with the Commission on Judicial Performance, 455 Golden Gate Avenue, Suite 14400, San Francisco, California 94102-3660. The answer shall be verified and shall conform in style to the California Rules of Court, rule 8.204(b). The Notice of Formal Proceedings and answer shall constitute the pleadings. No further pleadings shall be filed and no motion or demurrer shall be filed against any of the pleadings.

This Notice of Formal Proceedings may be amended pursuant to Rules of the Commission on Judicial Performance, rule 128(a).

BY ORDER OF THE COMMISSION ON JUDICIAL PERFORMANCE

Dated: 2/20/15

A handwritten signature in black ink, appearing to be 'Erica R. Yew', written over a horizontal line.

Honorable Erica R. Yew
Chairperson

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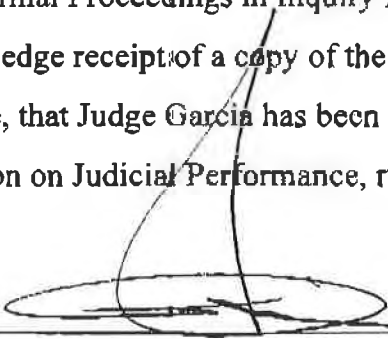
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JUDGE MARC A. GARCIA

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ACKNOWLEDGMENT OF SERVICE
OF THE NOTICE OF FORMAL
PROCEEDINGS

I, Edith R. Matthai, on behalf of my client, Judge Marc A. Garcia, hereby waive personal service of the Notice of Formal Proceedings in Inquiry No. 195 and agree to accept service by mail. I acknowledge receipt of a copy of the Notice of Formal Proceedings by mail and, therefore, that Judge Garcia has been properly served pursuant to Rules of the Commission on Judicial Performance, rule 118(c).

Dated: 3/5/15


Edith R. Matthai, Esq.
Attorney for Judge Marc A. Garcia
Respondent